

#### 4) Remarks

Claims 90–176 are pending in this application. Of these claims, claims 90, 101, 113, 128, 143, 154, and 162 are independent claims. All these claims have been amended to clarify the nature of the “branding indicia” displayed by the systems and methods of the inventions as branding indicia associated with the transaction facilitator, that are displayed by a payment enabler. None of such amendments are believed essential to patentability, as the claims are believed to have clearly recited the nature of the branding indicia as originally presented.

Various dependent claims have also been amended to make them consistent with their respective independent claims, and to correct certain minor errors.

All claims are now believed patentable, for the reasons that follow.

The applicant notes that a new examiner has been assigned to this case. The examiner is reminded that this case has been long pending, and interviews were conducted with the previous examiner Mr. Jeffrey Pwu in July and August 2003. Most importantly, the entire claim set now being considered was introduced to the case after the August 26, 2003 interview with Examiner Pwu, who suggested that claims directed to the display of branding indicia of the transaction facilitator by the payment enabling system appeared novel and patentable. Further, the cited *Kramer* patent has long been of record, was considered by the previous examiner, and is clearly not applicable as either a Section 102 or 103 reference (as will be explained). Further still, this case has been the subject of an RCE and was previously allowed in December 2003 by the examiner. But for reasons not shown or indicated in the record, the allowance was apparently withdrawn in April 2005 without even the courtesy of an explanation.

Great expense and trouble has been undertaken by the applicant to comply with the previous examiner’s suggestions, and it is submitted that these prior efforts should be recognized and a Notice of Allowance be issued forthwith. This case should be allowed without further delay.

In the most recent office action, all claims were rejected under 35 U.S.C. § 102(e) as being anticipated by the patent to *Kramer* (6,324,525). The examiner cited various aspects of *Kramer* as showing elements of the claims, all of which will not be repeated here. In relevant part, the examiner cited *Kramer* as “displaying branded [sic] indicia (not further defined, reads on e.g., the displayed word/icon “John’s Wallet”, or “Visa”, Figs. 32 – 34; col. 107), displaying

“information” (not further defined, reads on displaying the invoice Figs. 33 -34; col. 102, lines 35-62 ...), etc. Many other – and irrelevant – aspects of *Kramer* were cited by the examiner as ostensibly corresponding to certain language in the claims.

It is submitted that the examiner has misread and/or misunderstood the nature of the branding indicia that is in the claims as presented. It is clear from the present application (see in particular page 16, lines 14–22; page 38, lines 12–18, lines 24–30; FIG. 9, steps 920, 930; FIG. 10, steps 930, 920; FIG. 11, steps 920, 930) and as recited in the claims both as originally presented and as amended, that the inventions are, in part, directed to operations of a payment enabling system that allows buyers and sellers to select and utilize payment and/or disbursement instruments, in combination with displaying branding indicia associated with the transaction facilitator, i.e. the web pages displayed to buyers and/or sellers by the payment enabling system are identically branded with the transaction facilitator. As discussed in the cited portions of the specification, this together with other aspects of the inventions allows presentation of an integrated experience to the buyers and/or sellers, in which they never realize that they are at a different site for selection of payment and/or disbursement instruments.

These aspects are not disclosed, taught, or suggested by *Kramer*, or by any other reference. *Kramer*, it is submitted, is architecturally incapable of the claimed arrangement or functionality, because it is a completely different payment architecture, one in which there is no transaction facilitator and a different payment enabler, thereby creating the need for displaying the branding indicia of the transaction facilitator by the payment enabler to provide the integrated buying and selling experience. FIG. 22 of *Kramer* best illustrates that architecture: customers 2200 connect with web sites of merchants 2210, 2220, 2230, that in turn are connected to a gateway 2240 and host 2250. There is no payment enabler that handles the payment instrument (and disbursement instrument) processing for the transaction facilitator. *Kramer* merely shows a system that provides for directing transactions to a host processor 2250 for authorization (col. 88, line 35), while the gateway 2240 mediates transactions between merchants and a payment processor (col. 88, lines 38–40). There is no disclosure of displaying the branding indicia of the “host” (if that might be considered a “transaction facilitator”, which is not admitted). Besides, neither the *Kramer* “host” nor the “gateway” meets the requirements of the transaction facilitator as the term is used in the present claims. The branding indicia displayed in *Kramer*, as cited by the examiner, is merely the branding indicia of a particular payment form, e.g. VISA (FIG. 32,

33, 34). Col. 107 of *Kramer*, cited in particular by the examiner, has nothing to do with branding indicia of the transaction facilitator.

The applicants feel compelled to reply to the examiner's statement in the interview that the notion of displaying branding indicia of the transaction facilitator by the payment enabler was not likely to be given significant weight and was not "technical", in that displaying such indicia was tantamount to displaying "red" indicia or "green" indicia. Three points are worth noting: First, the display of branding indicia is indeed technical, as the display of such indicia is the result of technical operations within the payment enabler system – display the transaction facilitator's branding indicia is important to the operations of the payment enabler, to provide customers of the transaction facilitator with an integrated experience. Second, and using the examiner's own metaphor of red and green indicia, such a display is just as technical as that of displaying red indicia or green indicia – by a traffic light! One cannot reasonably argue that the display of red indicia or green indicia by a traffic light has no technical or physical significance – just ask the person who has been in an accident at a traffic light when someone ignores the red and runs the light. Third, the applicants are not claiming the display of indicia by itself – the claims are directed to combinations of steps and elements for operations of a payment enabler, not just the display of indicia.

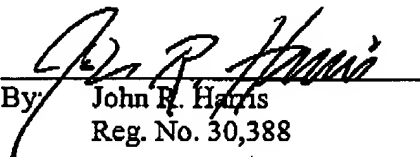
Notwithstanding that the claims as originally presented were clear that the branding indicia was that of the transaction facilitator and not of some payment instrument like VISA, the claims have been clarified to emphasize that the branding indicia is that associated with the transaction facilitator, which plainly is not that of particular payment forms like VISA. It is thus submitted that the claims, as amended, are not anticipated by, or obvious in view of, the *Kramer* patent, because of the difference in overall architecture between *Kramer* and that of the present claims, and the lack of recognition (disclosure, teaching, or suggestion) of any desirability of presenting an integrated experience to buyers and sellers, by a payment enabler that is separate from, and provides payment and/or disbursement instruments for, a transaction facilitator. Further, none of the PayPal references (of which many are of record in this case already) discloses, teaches or suggests the claimed inventions.

It is submitted that the claims in this case recite inventions that are novel and non-obvious over any of the art cited by the Examiner, as no art teaches or discloses the various aspects of an online commerce system and methods for enabling payment from a buyer to a

seller in connection with an online transaction involving the display of the same branding information as that of the transaction facilitator on a payment enabling system operated by a third party, as set forth in various claims presented herein. Thus, the foregoing is submitted as a full and complete response to the Office Action mailed May 2, 2005 and is believed to place all claims in the application in condition for allowance.

If the Examiner believes that there are any issues that can be resolved by telephone conference, or if there are any informalities that may be addressed by an Examiner's amendment, please contact the undersigned at (404) 233-7000.

Respectfully submitted,

  
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